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GROUP

In re Application of	:	
David Palsulich, et al.	:	DECISION ON PETITION
Application No.: 09/385,386	:	TO WITHDRAW THE
Filing Date: August 30, 1999	:	HOLDING OF ABANDONMENT
Attorney's Docket No.: MICRON.093A	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on September 10, 2002. There is no fee for this petition.

The petition is **DISMISSED**.

A review of the application file reveals that a Notice of Abandonment was mailed on July 8, 2002 holding the application to be abandoned for failure to timely file a proper response to the Office action (a restriction) mailed on November 23, 2001.

Petitioner asserts that a response (an election) to the Office action of November 23, 2001 was timely filed via facsimile transmission on December 11, 2001. In support of this assertion, petitioner submitted a copy of a response entitled "RESPONSE TO RESTRICTION REQUIREMENT" with a transmittal sheet which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated December 11, 2001.

The file record does not include the originally submitted response.

REGULATION

37 C.F.R. § 1.8(b) provides:

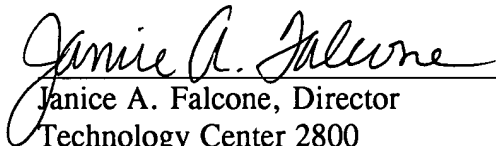
"In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence or receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement."

The petition fails to include a statement which attests on a personal knowledge basis to the previously timely transmission and a copy of the sending unit's report confirming transmission. In addition, the facsimile number (703) 302-7723 listed on the facsimile cover sheet provided by the petitioner is not a Patent and Trademark Office number.

For these reasons, the petition is **DISMISSED** and the application remains abandoned. Petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137(b).

Any inquiries regarding this decision should be directed to Edward Westin at (703) 308-4823.



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